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Report of the Secretary-General on children and armed conflict in Nepal

Summary

The present report, prepared pursuant to the provisions of Security Council resolution 1612 (2005), is presented to the Council as the second country report on the situation of children and armed conflict in Nepal. It covers the period from 1 October 2006 to 31 December 2007 and follows my first report (S/2006/1007) and the subsequent conclusions and recommendations of the Working Group on Children and Armed Conflict (S/AC.51/2007/8).

The report indicates that although grave violations of children's rights have decreased significantly since the signing of the comprehensive ceasefire agreement, violations against children have not ceased. The report notes that substantial numbers of children were recruited by the Communist Party of Nepal-Maoist (CPN-M) prior to the signing of the ceasefire agreement and moved into cantonments. No progress has been achieved in securing their formal discharge although many have been released informally. The report also notes that social unrest in the Terai region has contributed to a pattern of protests and emergence of political and armed groups that have created new risks for children, including recruitment. In particular, the report highlights the increasing use of children by all major political parties in political demonstrations, strikes and blockades.

The present report makes a number of recommendations, including recommendations that the CPN-M agree to a concrete, time-bound action plan to implement its commitment to release children in the Maoist army; and end obstacles to the reintegration of informally released children. It also recommends that the Government of Nepal make a clear commitment to the reintegration of children associated with armed forces and armed groups, and that it enhance the legal protection of children, by criminalizing child recruitment and prosecuting violators of children's rights. The report also calls on armed groups in the Terai to end violations of children's rights, and on political parties to end the use of children in demonstrations, strikes and blockades.

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I. Introduction

1. The present report, prepared in accordance with the provisions of Security Council resolution 1612 (2005), covers the period from 1 October 2006 to 31 December 2007 and follows my first report on the situation of children and armed conflict in Nepal (S/2006/1007) and the subsequent conclusions and recommendations of the Working Group on Children and Armed Conflict (S/AC.51/2007/8). The report examines trends in violations of children's rights in the volatile aftermath of Nepal's decade-long armed conflict, with a focus on the six grave violations listed in the resolution: killing and maiming of children; recruitment and use of children as soldiers; abductions; sexual violence; attacks on schools and hospitals; and the denial of humanitarian access to children.

2. Grave violations of children's rights have decreased significantly since the signing of Nepal's Comprehensive Peace Agreement in 2006. The peace process as a whole has made important progress in a short time frame. However, violations against children have not ceased:

(a) Substantial numbers of children were recruited by the Maoist army just before the signing of the Comprehensive Peace Agreement. No progress was achieved in securing the formal discharge of these children although large numbers have been informally released;

(b) Social unrest linked to long-standing issues of exclusion has contributed to a steady pattern of protests and the emergence of political and armed groups in the southern Terai plains that have created new risks for children, including displacement, killings and recruitment;

(c) Despite the Government's efforts, public security has been undermined in many areas as State law enforcement agencies have not yet been able to extend their reach in a way that allows them to address security problems consistently or effectively. Political parties and movements are involved in widespread and sometimes violent street protests and strikes, and children are frequently drawn into risky forms of participation in public demonstrations, strikes and blockades.

II. Political, military and social developments

3. The Comprehensive Peace Agreement consolidated earlier agreements and declared an end to the Maoist insurgency. The accord also incorporated the basic arrangements for the cantonment of Maoist army combatants, the restriction of the Nepal Army to its barracks and the storage of arms and munitions of both sides. The Government and CPN-M signed a separate Agreement for Monitoring the Management of Arms and Armies witnessed by the United Nations on 8 December 2006. The agreement prohibits abduction, sexual violence, denial of humanitarian access, and the military recruitment or use of children under 18. It commits both parties to the immediate release and reintegration of children associated with armed forces.

4. While both the Comprehensive Peace Agreement and the Agreement for Monitoring the Management of Arms and Armies contained provisions for disbanding the militia linked to the Maoist army, neither presented detailed plans in this regard. The parties to the peace process have yet to provide for the release

arrangements and reintegration programmes that would have allowed children in those forces their rights to measures for recovery and reintegration. The Maoist militia carried out a range of functions during the conflict, including mobilization, propaganda, serving as an irregular army and providing different forms of "law enforcement" in areas under CPN-M control. When the Maoist militia was disbanded, many members reportedly joined the CPN-M's Young Communist League, an organization re-established in December 2006. Some members of the Maoist army are also known to have joined the League rather than join cantonments. Some of these Young Communist League recruits from the Maoist army and militia are under 18.

5. As the Maoists prepared to move their forces into cantonment, they engaged in a recruitment campaign that peaked in November 2006. The campaign often targeted children, promising relatively generous salaries to recruits willing to enter into Maoist army cantonments. By January 2007, Maoist army personnel assembled in 7 main cantonments and 21 satellite sites. Between January and February 2007, the United Nations registered 31,318 Maoist army personnel in cantonments. The arms monitors of the United Nations Mission in Nepal (UNMIN) registered and supervised the storage of Maoist army weapons for round-the-clock monitoring. An equivalent number of Nepal Army weapons were put in storage.

6. In the second stage of the registration process that was conducted from June 2007 to December 2007, United Nations teams verified the ages and date of recruitment of all personnel in the cantonments. Those born before 25 May 1988 or recruited after 25 May 2006 were to be immediately discharged, as required by the Comprehensive Peace Agreement. The United Nations teams assessed 2,973 Maoist army members to have been under 18 years of age at the time of the ceasefire. An additional 1,035 adults assessed to be over 18 were declared to have been recruited after the cut-off date of 25 May 2006.

7. In addition, 8,640 Maoist army members who were initially registered in February 2007 did not present themselves for the verification process and were automatically disqualified. Many are believed to have been children who were released from the Maoist army informally or self-released, without the benefit of planned reintegration. There are also consistent reports that significant numbers of informally released children have been drawn into the Young Communist League.

8. The verification process was completed in mid-December 2007. However, there was no progress on formal discharge. The CPN-M leadership's commitment under the Comprehensive Peace Agreement to immediately release children was not honoured. In practice, the CPN-M linked discharge to a separate agreement with the Government that required the payment of allowances to any personnel in cantonment, including those disqualified under terms of the Comprehensive Peace Agreement. The failure to release the children is not only a violation of the Agreement but also a grave violation of international law. UNMIN, the United Nations Children's Fund, the Office of the High Commissioner for Human Rights and child protection agencies have repeatedly insisted that both the Government and the Maoists should treat the discharge of children as an urgent priority and that payment should not be a precondition for release.

9. The CPN-M left the Government in September 2007, and elections scheduled for November 2007 were postponed. On 23 December 2007, the CPN-M rejoined the Government, after the signing of a 23-point agreement that committed political

parties to elections. The agreement required the immediate discharge of those Maoist army members who were disqualified by the verification process, but only after payment of their allowances. It also required the establishment, within one month, of commissions to review and enhance peace process implementation.

10. In February and March 2008, after the end of the reporting period, allowances were paid to these disqualified Maoist army personnel — including children — in some cantonments. Disqualified personnel learned of their status only upon payment. However, none have been formally discharged.

11. Against the background of social unrest, there was a steady undercurrent towards militancy among many traditionally marginalized groups, especially in the Terai region. Some Terai groups are illegal armed groups that use violence as a principal strategy. Different factions of the Jantantrik Terai Mukti Morcha, Madhesi Mukti Tigers and other armed groups engaged in kidnapping, killing, extortion and intimidation. Often these actions were criminal as much as they were political in design. There is evidence that one of these groups recruited a child for direct participation in armed violence; many reports indicate that children are being recruited, and there are worrying indications that some children may have gravitated from the Maoist army to armed Terai groups.

12. Youth wings of several major political parties also recruit into their membership many children over 16 and significant numbers of children under 16. Parties and their youth wings entice children to participate in demonstrations where there is a risk of violence, and police sometimes respond with excessive force. These political parties and organizations have failed to take meaningful measures to address those risks and the Government could do more to address this situation.

III. Grave violations of children's rights

13. Violations of children's rights in the context of conflict have decreased significantly since my last report to the Security Council. However, children are still associated with the Maoist army and there was no progress in securing their formal release; children are still being killed and injured in political demonstrations and by explosive devices left behind during the conflict. In addition to these grave violations, children are still being coerced to take part in political events or made victims of the CPN-M "law enforcement" practices. The CPN-M and armed groups in the Terai bear the responsibility for the majority of the abuses documented during the reporting period. Further, the Government has not taken the necessary steps to end violations and abuse or to ensure effective accountability for violations and abuse committed by both parties during and after the conflict.

A. Recruitment and use of children by the armed forces and armed groups

14. The Nepal Task Force for Children and Armed Conflict, set up under the terms of Security Council resolution 1612 (2005), monitored the recruitment of children by the Maoist army and affiliated CPN-M organizations during the post-ceasefire recruitment campaign that reached its greatest intensity in November 2006. Between October and December 2006, the Task Force documented 1,576 cases where

families reported that their children had been recruited by the CPN-M. There were 925 registered cases in November 2006 alone. Some of these children were recruited to the Maoist army in violation of the Comprehensive Peace Agreement, while others were recruited to CPN-M affiliated organizations. Approximately 30 per cent of these children were released after a few days spent with the CPN-M, and approximately 20 per cent were later found to be in Maoist army cantonments. Many of the children in the cantonments were relatively young — the average age of children from the Task Force list identified in cantonments was 14,6. The whereabouts of the remaining 50 per cent are currently unknown to Task Force members.

15. The registration and verification process of Maoist army personnel was concluded in December 2007 but children have yet to be formally released. The CPN-M and other parties in the Government agreed that the Government would pay allowances to all Maoist army personnel in cantonments. But the agreement was only partially implemented: the Government released three-month allowances in October 2007 — however, unpaid allowances continued to accrue. The payment of allowances has given poor families an invidious choice between keeping their children in the cantonment and losing income. In a limited number of cases, the payment of allowances may have encouraged commanders to re-recruit children whom they had already released. Payments have therefore become an obstacle to release. While the Government and the CPN-M have made efforts to address the problem of payment of disqualified CPN-M personnel, there has been no commitment to funds or programmes for the recovery and reintegration of children affected by armed conflict, including many informally released, and there has been limited enthusiasm for the offer of assistance from the United Nations. Consultations between the Government and CPN-M on the above are ongoing.

16. An unknown number of children formerly associated with the CPN-M militia were informally released after the militias were disbanded by the Comprehensive Peace Agreement. In 2007, it became clear from interviews with children formerly associated with the Maoist army that the CPN-M had a policy of informally releasing children from cantonments. The majority of children formerly associated with armed groups in Nepal have left armed groups without any measures for their recovery and reintegration, or framework for their protection. Informal release carries many risks for the children and young people involved — they face problems in accessing reintegration programmes and are at risk of re-recruitment by new armed groups operating in the country. Additionally, informally released children may find it difficult to demonstrate their civilian status.

17. Informal release happens in different ways. In some cases, children have escaped from the Maoist army; in others, they have been asked to leave or negotiated their departure. In other cases, children were moved from the Maoist army to other CPN-M organizations, particularly the Young Communist League. Disturbing reports indicate that limited numbers of children informally released from cantonments have been forcibly re-recruited by the Maoist army or CPN-M organizations. During the reporting period, 12 cases were documented. Some cases were resolved with the help of Task Force members, but in other cases, children are still in hiding from the CPN-M.

18. Informally released children have widely varying experiences. While some have joined the programme organized by the working group for children associated

with armed forces and armed groups (the Children Associated with Armed Forces and Armed Groups Working Group, which is made up of UNICEF and other child protection agencies), others have entered informal labour markets, or have migrated to India or other foreign destinations to seek work. There are also indications that some children informally released from the Maoist army have joined armed factions operating in the Terai region. Further, many have joined the Young Communist League: some have joined voluntarily while others have reportedly done so under duress. The CPN-M frequently targeted and recruited many girls — many of whom joined to escape traditional restrictions on their lives. It has been particularly difficult to monitor outcomes for girls, although there are indications that a number of girls face greater stigma resulting in pressure to marry early.

19. The Young Communist League appears to have absorbed many members of disbanded CPN-M militias. Many children recruited during the post-ceasefire recruitment campaign of 2006 did not join the Maoist army. There are indications that they have gone to the Young Communist League instead. The League has recently been involved in confrontational street politics, and has been implicated in the supervision, disciplining and even re-recruitment of children informally released from the cantonments.

20. CPN-M recruitment methods appear to have been imitated by some Terai political parties and armed groups. The Madhesi Mukti Tigers, for example, reportedly set up cultural groups that attract teenagers. In at least one case, a girl who joined a Madhesi Mukti Tigers cultural group proceeded to direct participation in armed violence during the reporting period.

21. Some Terai political parties and groups have set up youth wings which provide physical training to members and which have ill-defined "security objectives". It is a matter of concern that these political parties and groups, despite denials, are setting up organizations that begin in lawful political activism but may end in the military recruitment and use of children.

B. Killing/maiming

22. There were no reports of deliberate killings of children by armed forces or armed groups. However, children are still losing their lives as a result of remnants of war and political violence, including at least 18 children killed and 47 injured in the reporting period. Seven children were killed in shootings and as a result of an assault during demonstrations following the unrest in the Terai. A 15-year-old boy was killed by the CPN-M on 19 January 2007 at a roadblock in Siraha district established by the Madhesi People's Rights Forum, a Terai political party. A 17-year-old girl associated with a CPN-M cultural group was one of 27 people killed in March 2007 following a confrontation between the CPN-M and the Madhesi People's Rights Forum during simultaneous rallies in Gaur, a Terai town. A 10-year-old boy was one of 14 people killed in a surge of communal violence in Kapilvastu District in September 2007. Many more children were injured during public rallies between December 2006 and February 2007, including eight children who were beaten and injured by police during demonstrations.

23. Improvised explosive devices left over from the conflict killed 6 children and injured 44. United Nations figures show an overall decrease in the number of

recorded victim-activated explosions in 2007. However, Nepal is unusual in that most of the victims of these explosions are under the age of 18.

24. There has been limited progress in ending impunity for crimes against children. In March 2007, forensic pathologists, with the support of OHCHR, exhumed remains believed to be of Maina Sunuwar, a 15-year-old girl, who died after reportedly being tortured in the custody of the Nepal Army. The Supreme Court ordered the police to conduct an investigation into her death in September 2007. However, the police have shown reluctance to investigate the case fully, and to date the Nepal Army has failed to cooperate adequately. There have been no charges filed related to the circumstances of the death of the girl. Maina Sunuwar was found dead in February 2004 at the Birendra Peace Operations Training Centre in Kavrepalanchowk District. In September 2005, after intense public and international pressure, three Nepal Army officers were court-martialled and sentenced to six months' imprisonment for failing to follow proper procedures when disposing of Maina Sunuwar's body.

C. Abduction of children

25. Abduction of children for military purposes that characterized the period of conflict has decreased significantly during the reporting period. Between June 2006 and February 2007, 168 children were known to have been taken in individual incidents of abduction with the majority abducted in November 2006 during the Maoist army recruitment campaign. Of the 168 children, 135 were abducted for recruitment purposes, while 33 were abducted for cultural and political programmes or for other reasons. A total of 49 children have been released. In 2006, over 324 children were taken in 136 incidents of group abduction with more than 210 abducted in November 2006 and the rest between May and December 2006. All the children were abducted in order to be recruited into the Maoist army. A total of 110 of them are reported to have returned home or been released. In addition, more than 802 children were taken in incidents of group abduction between October 2006 and February 2007 in order to take part in CPN-M political programmes or mass gatherings and were released at the end of the day's political activities.

26. No new cases of arrest under the Terrorist and Disruptive Activities (Control and Prevention) Ordinance were reported. The Ordinance expired at the end of September 2006 and has not been renewed. Most children arrested under the Ordinance during the conflict were released but some were kept in detention on charges of common crimes; all of them are now over 18 years of age. Three female CPN-M detainees have been in pretrial detention for between six and seven years, two of whom were 13 years old and one 17 years old at the time of their arrest.

D. Attacks on schools and hospitals

27. Schools were directly affected by closures and blockades, which are a widespread tactic of protesters in Nepal. Many schools were closed during the extensive protests in the Terai at the beginning of 2007, which continued throughout the reporting period. More than 10 public schools were used by CPN-M and its affiliated organizations for periods ranging from four hours to one day/night for

their cultural programmes and shelter from October 2006 to December 2007 in Bardiya, Gorkha and Sindhupalchok districts.

E. Sexual violence

28. There were no reports of sexual violence in the context of conflict in the reporting period.

F. Denial of humanitarian access

29. Deliberate denial of humanitarian access is rare and the ceasefire has eased the operations of humanitarian actors. However, widespread strikes and blockades carried out by armed and unarmed political groups, political parties and groups have disrupted humanitarian activity and access to health and education services; much of this disruption happened in the Terai. Incidents of intimidation of non-governmental organization workers by CPN-M cadres have also been reported. One incident was aggravated by the seizure of confidential documents related to the recruitment of children by CPN-M cadres.

IV. Dialogue and action plans

30. The Task Force on Children and Armed Conflict has set up a monitoring and reporting mechanism that is present in 54 of Nepal's 75 districts and operates throughout all other districts. The Task Force has a high level of participation from national and international organizations working on children's rights, and the membership of the Task Force has helped protect these organizations from intimidation on some occasions. The Task Force is undertaking a review of its performance to further strengthen its advocacy and coordination efforts.

A. Dialogue with the parties

31. Delays in reappointing focal points hampered advocacy and the development of action plans to end recruitment and other violations. Both parties to the Comprehensive Peace Agreement appointed focal points for children and armed conflict. The Government is represented by the Joint-Secretary of the Ministry of Women, Children and Social Welfare. The CPN-M appointed a focal point who subsequently left for other duties, and who was replaced in February 2008, after the end of the reporting period.

32. In spite of the lack of progress in formal dialogue, local-level dialogue between Task Force members and parties to the Comprehensive Peace Agreement has led to some results for children. Families of children from cantonments often sought the support of local Task Force members to negotiate their release. Some cases of abduction have been resolved with the intervention of Task Force members. However, these local activities are an inadequate substitute for what is needed: a nationwide action plan for the release of all children in the Maoist army agreed between the Government and the CPN-M and endorsed in a concrete, time-bound action plan with the United Nations in Nepal.

33. Many political parties in the Terai region have set up youth wings that are involved in violent street politics, and some armed groups using political violence have recruited children. There has to date been no dialogue with these armed groups on grave violations of children's rights.

34. The Government of Nepal has made some progress towards meeting its CPA obligations to provide for the rehabilitation of children formerly associated with armed forces and groups. The Ministry of Peace and Reconstruction together with the Ministry of Women, Children and Social Welfare, and the Children Associated with Armed Forces and Groups Working Group is formulating a National Plan of Action for Conflict-Affected Children, including the Working Group, that will lead to a nationwide programme for conflict-affected children.

B. General child protection initiatives

35. On 3 January 2007, the Government of Nepal ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Nepal made a binding declaration on signing the Optional Protocol that it would not recruit children under 18 years to its Army or the Armed Police Force. In February 2007, the Government endorsed the Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups. However, despite Nepal's ratification of several international instruments, the process of incorporating international treaties into domestic law has been delayed. The review of the Child Act initiated in 2006 has been completed by the Government but has yet to be passed by the Parliament.

36. On 18 October 2006, an inter-ministerial task force was formed to assess the implications of Nepal becoming a party to the Rome Statute of the International Criminal Court. The report of the task force was submitted in December 2006 and the Government stated that it would begin the process of ratification.

37. In July 2007, the Government put forward a bill to set up a Truth and Reconciliation Commission, which is currently being consulted with a number of stakeholders. OHCHR expressed several concerns about the bill, which included provisions that would provide amnesty for the perpetrators of gross human rights violations and violations of international humanitarian law. The bill also lacks any special measures for child victims, witnesses or accused children.

C. Specific initiatives for Children Associated with Armed Forces and Armed Groups

38. The Comprehensive Peace Agreement and the Interim Constitution require the Interim Council of Ministers to set up a special committee tasked with the supervision, integration and rehabilitation of Maoist army personnel. The committee met once in the reporting period, and did not address the need to set up a national institution responsible for the reintegration of children from the Maoist army.

39. The Children Associated with Armed Forces and Armed Groups Working Group draws together child protection and human rights organizations. The Working Group has developed plans for managing the release of children from cantonments when the Maoist army eventually discharges them. In mid-2007, Working Group

members began providing reintegration opportunities for informally released children whom they have identified through local awareness programmes. The Working Group has developed tools and guidelines for the reintegration programme; supported project design and implementation; and strengthened partnerships and coordination at the regional level. The programme began implementation in early July 2007.

40. More than 2,500 children were registered in the Children Associated with Armed Forces and Armed Groups programme between January and December 2007. These children have been informally or self-released from the Maoist army, from CPN-M affiliated organizations, or from the Government security forces, and represent only a portion of the estimated total caseload.

41. The programme has faced some serious obstacles. The Children Associated with Armed Forces and Armed Groups Working Group has taken steps to explain the purposes of the programme to the CPN-M and other political parties in each operational district. However, in some areas, the programme has faced obstruction from local CPN-M personnel. CPN-M personnel have accused programme staff of "stealing cadres" from the party. Some threats have been made against programme staff. The Children Associated with Armed Forces and Armed Groups programme has not been allowed to disseminate information about the programme to children in cantonments.

42. A limited number of children were re-recruited into the Maoist army during the reporting period, and several child participants in the programme were among those forcibly re-recruited. The partial payment of allowances to the Maoist army in October 2007 gave commanders an incentive to increase their numbers and some children an incentive to return. Re-recruitment is a grave violation in itself, but it also severely undermines the ability of programmes to operate, and for children to have confidence in their rehabilitation without harassment.

V. Recommendations

A. Recommendations directed at the Government of Nepal

43. The Government of Nepal should make clear its commitment to lead in the reintegration of children associated with armed forces and armed groups and should intensify efforts in collaboration with the CPN-M and the United Nations to set up an effective, well-resourced and well-monitored programme for the release and reintegration of these children.

44. The Government of Nepal should take significant steps in the area of legal reform, accountability and reconciliation to promote the protection of children and end impunity for abuses and violations against them, including enacting a law criminalizing the recruitment of persons under 18 years. It should take further steps to ensure that law enforcement agencies and the courts investigate and prosecute crimes against children and strengthen legal institutions to ensure that human rights issues are addressed and also to ensure that any strengthening or reform of law enforcement and criminal justice systems are in line with international standards.

45. The Government of Nepal should ensure that adequate protective measures are in place for child victims and witnesses and for children accused of crimes in the

context of conflict, as well as include children's participation in any activities of transitional justice to ensure that their experiences of the conflict are heard.

B. Recommendation directed at the Seven Party Alliance

46. The seven parties should appoint members to the commissions which monitor the implementation of the peace agreement who are specifically tasked to examine children's rights in the peace process.

C. Recommendations directed at the Communist Party of Nepal-Maoist

47. The CPN-M should take urgent steps to enter into a concrete, time-bound action plan with the United Nations to implement its commitment for the immediate and unconditional release of children in Maoist army cantonments as undertaken in the Comprehensive Peace Agreement and Agreement for Monitoring the Management of Arms and Armies, including to set out without delay, a time frame for the release of children, and make clear that this release will not be linked to conditions, such as wage payment or progress on reform of the security sector. A formal letter by the CPN-M leadership endorsing the above-mentioned action plan and identifying a high-level military focal point should be disseminated to its commanders in the field.

48. The CPN-M should work closely with the Task Force to address without delay children informally released from the Maoist army who were later forcibly re-recruited, investigate commanders responsible for recruitment, and take appropriate measures against those found to be responsible.

49. The CPN-M should begin working with the United Nations and any future government reintegration authority to ensure that children who were informally released are aware of their entitlements to reintegration support as appropriate. It should publicly endorse the Children Associated with Armed Forces and Armed Groups programme, disseminate information on that programme to children in cantonments, and provide a letter of support for the programme that can be used by programme staff when challenged by CPN-M personnel.

D. Recommendation directed at the armed groups in the Terai

50. All armed groups in the Terai region should publicly commit to ending all violations of children's rights, including recruitment of all persons under 18 years of age.

E. Recommendation directed at all political parties

51. All political parties should make a commitment to end the manipulation and coercion of children to participate in political demonstrations, strikes and blockades. They should ensure that these commitments are disseminated to their cadres in areas where they work, and the electoral commission should hold accountable those who fail to do so.

52. My Special Representative for Children and Armed Conflict is being directed to work on the invitation of the Government of Nepal to undertake a mission to Nepal in the near future to help draw attention to the need to include the protection of children's rights into the transition and post-transition priorities of the Government of Nepal and its United Nations and civil society partners.